

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

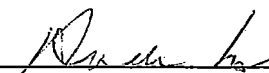
In the Matter of the Petition for)
Termination of Probation of:) OAH No. N-1997100227
)
STEPHEN ALLEN SHEPPARD, M.D.)
96461 Ridgeway)
Brookings, Oregon 97415)
Physician and Surgeon's)
Certificate No. A-27522,)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on February 6, 1998.

IT IS SO ORDERED January 7, 1998.



Anabel Anderson Imbert, M.D.

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PROPOSED DECISION

The matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Medical Quality Hearing Panel, Office of Administrative Hearings, on November 13, 1997, in Sacramento, California.

Petitioner Stephen Allen Sheppard, M.D. ("Petitioner") appeared and represented himself.

Mara Faust, Deputy Attorney General, Health Quality Enforcement Section, Department of Justice represented Respondent Medical Board of California.

Evidence having been fully received, the matter was submitted on November 13, 1997.

FINDINGS OF FACT

Procedural Findings

I

On July 14, 1962, Petitioner was issued Osteopathic Physician's and Surgeon's Certificate No. 20A1286; thereafter, he elected to use the designation "M.D." rather than "D.O." and to come under the jurisdiction of the Medical Board of California ("Board"). Accordingly, on March 21, 1975, Petitioner was issued Physician and Surgeon Certificate No. A-27522 by the Board.

II

On November 30, 1994, following the September 1, 1993 filing of an Accusation in a matter entitled In the Matter of the Accusation Against: Stephan A. Sheppard, M.D., Case No. D-5368, the Board, pursuant to a stipulation by and between Petitioner and the Division of Medical Quality, revoked Petitioner's certificate, stayed the revocation, and placed him on probation for five years on various terms and conditions, effective December 30, 1994.

III

Petitioner, by Petition for Termination of Probation dated January 10, 1997, seeks to terminate his probation.

Factual Findings

IV

The facts and circumstances underlying the discipline set forth in Finding No. II are as follows:

- A. Between March 1, 1991, through and including September 17, 1991, six undercover operations were conducted through Petitioner's medical office in San Diego, California.
- B. During the undercover operations referenced in Finding No. IV.A, Petitioner issued eight prescriptions for dangerous drugs and controlled substances to five undercover operatives without good faith prior examinations and medical indications therefor.
 - 1. On March 1, 1991, Petitioner prescribed Fastin to an undercover operative using the name Rachel B [REDACTED] ("B [REDACTED]") without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
 - 2. On March 8, 1991, Petitioner prescribed Tenuate to B [REDACTED] without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
 - 3. On April 30, 1991, Petitioner prescribed Vicodin to an undercover operative using the name Barbara R [REDACTED] ("R [REDACTED]") without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.

4. On May 13, 1991, Petitioner prescribed Fastin to an undercover operative using the name Cindy R [REDACTED] ("R [REDACTED]") without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
 5. On June 17, 1991, Petitioner prescribed Vicodin to Radell without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
 6. On June 17, 1991, Petitioner prescribed Vicodin to an undercover operative using the name Jeff B [REDACTED] ("B [REDACTED]") without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
 7. On September 17, 1991, Petitioner prescribed Vicodin and Tenuate to an undercover operative using the name Tony D [REDACTED] ("D [REDACTED]") without a good faith prior examination and medical indication therefor, and without legitimate medical purpose.
- C. On January 7, 1992, members of the San Diego Drug Diversion Task Force served a search warrant at Petitioner's medical office and evidence was seized incident thereto.
1. Petitioner failed to maintain on a current basis a complete and accurate record of each controlled substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him, in violation of Title 21, Code of Federal Regulations, §1304.21(a).
 2. Petitioner failed to take a new inventory of all stocks of controlled substances on hand in violation of Title 21, Code of Federal Regulations, §1304.13.
- D. On February 26, 1992, in a matter entitled People v. Stephen Allen Sheppard, San Diego Municipal Court Case No. CR129641, Petitioner convicted on his plea of guilty of violating Health and Safety Code §11154 (Unlawful Prescribing), a felony and crime of moral turpitude substantially related to the qualifications, functions, or duties of a physician and surgeon. Petitioner was sentenced to

probation for five years and ordered, inter alia, to surrender his Drug Enforcement Administration permit, pay \$1,000, and complete 350 hours of community service.

- E. Petitioner, by his conduct as referenced in Finding Nos. IV.A - IV.B and IV.D, violated Business and Professions Code §§2220, 2227, 2234, 2234(a), and 2237 on the grounds of unprofessional conduct for conviction of a state statute governing dangerous drugs or controlled substances.
- F. Petitioner, by his conduct as referenced in Finding Nos. IV.A - IV.D, violated Business and Professions Code §§2220, 2227, 2234, 2234(a), 2237 and 2238 on the grounds of unprofessional conduct for violating state statutes or federal regulations governing dangerous drugs or controlled substances.
- G. Petitioner, by his conduct as referenced in Finding Nos. IV.A - IV.B and IV.D, violated Business and Professions Code §§2220, 2227, 2234, 2234(a), and 2242(a) on the grounds of unprofessional conduct for prescribing, dispensing or furnishing dangerous drugs without a good faith prior examination and medical indication therefor.
- H. Petitioner, by his conduct as referenced in Finding Nos. IV.A - IV.B and IV.D, violated Business and Professions Code §§2220, 2227, 2234, 2234(a), 2238, 4288(a) and 4288(b) on the grounds of unprofessional conduct for dispensing dangerous drugs not correctly labelled.

Circumstances in Rehabilitation

V

Encouraged by his Probation Monitor to petition for early termination of probation, Petitioner, 77, acknowledges the unfortunate circumstances referenced in Finding No. IV and leading to his discipline as referenced in Finding No. II. He acknowledges his lack of prudent and appropriate professional judgment and attention to detail. Although not intending to engage in privileges incident to a Drug Enforcement Administration permit, and engaged in the practice of psychiatry for veterans, the effect of Board discipline has functioned to compel his professional circumspection in the discharge of his duties and responsibilities as a physician and surgeon with respect to the administration of controlled substances and dangerous drugs.

VI

Petitioner has successfully met all terms and conditions of his probation.

VII

Petitioner has successfully met the terms and conditions of his court ordered probation.

VIII

The conduct underlying Petitioner's discipline occurred more than five years ago.

IX

Petitioner, having gained from the salutary and rehabilitative aspects of probation,¹ is capable of returning to the full practice of medicine without further probationary restrictions.

X

Petitioner's Board Probation Monitor, Senior Investigator Everett Gremminger, recommends approval of the petition referenced in Finding No. III.

DETERMINATION OF ISSUES

The objective of a proceeding under the Medical Judicial Procedure Improvement Act² is to protect the public and, where possible, to effectuate the rehabilitation of an errant physician,³ Petitioner has dutifully responded to the Board's imposition of discipline and undertaken action deliberately directed to his rehabilitation, commendably noted by his Board Probation Monitor, thereby meeting the Board's rehabilitative focus.

Accordingly, Petitioner, pursuant to Business and Professions Code §2307 and Finding Nos. I - X, has made a satisfactory showing that with due consideration for the public safety it would not be contrary to the public interest to terminate his probation.

¹ Business and Professions Code §2229.

² Stats. 1990, ch. 1597, §39.

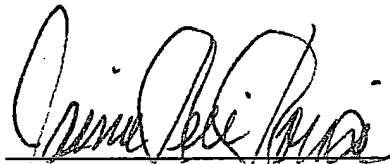
³ See footnote 1.

ORDER

The Petition for Termination of Probation of Petitioner Stephen Allen Sheppard, M.D. (Certificate No. A-27522) is granted. The probation heretofore imposed by the Medical Board of California on Certificate No. A-27522 issued to Petitioner is terminated.

Dated: _____

11-21-97



JAIME RENE ROMAN

Administrative Law Judge
Medical Quality Hearing Panel
Office of Administrative Hearings